

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOHN K. GOODROW,

:

Plaintiff,

:

v.

:

Civil Action No: 3:11-CV-00020

FRIEDMAN & MACFADYEN, P.A., et al., :

Defendants.

:

DEFENDANTS' MOTION TO STAY DISCOVERY

COME NOW the Defendants, Friedman & MacFadyen, P.A., Johnie R. Muncy, and F&M Services, L.C. (hereinafter "Defendants"), by counsel, and respectfully request that the Court stay discovery in these consolidated matters pending resolution of soon to be filed motions to dismiss. In support of this motion, Defendants state:

1. The Plaintiffs in these consolidated actions previously filed Complaints, and Motions to Amend Complaints, seeking relief on theories that the Defendants committed certain civil RICO violations and breaches of fiduciary duty.

2. The Court granted Defendants' Motions to Dismiss those Complaints. (Docket No. 107.) The Court also granted Plaintiffs leave to amend each of the Complaints to repair, if they can, their deficiencies. *Id.*

3. After requesting and receiving two (2) extensions of time in which to amend their Complaints, on January 29, 2013 Plaintiffs filed Amended Complaints. While Defendants have only had six days to review the Amended Complaints, in two instances Second Amended Complaints, the Amended Complaints appear to re-allege substantially similar claims for relief

as the pleadings they amend. Defendants are, accordingly, preparing Motions to Dismiss the Amended Complaints.

4. The Court had previously stayed discovery in these consolidated matters pending resolution of the motions to dismiss previously filed.

5. Defendants request that the previous discovery stay be applied to the Amended Complaints for substantially the same reasons. Until resolution of the motions to dismiss, the parties cannot know what counts, if any, will survive and thus what discovery, if any, will be reasonably calculated to lead to admissible evidence. Moreover, given that the Amended Complaints make claims for causes of action the Court has already dismissed once before (indeed, they reassert one theory that Plaintiffs themselves withdrew at oral argument on the previous Motions to Dismiss), prudence and judicial economy, not to mention conserving the parties' scarce resources, counsel in favor of staying discovery until the pending Motions to Dismiss are resolved.

6. Rule 26(c) of the Federal Rules of Civil Procedure authorizes the court to issue orders establishing an array of limitations on discovery. A court may properly exercise its discretion under Rule 26(c) to stay discovery pending resolution of dispositive motions. *Tilley v. United States*, 270 F. Supp. 2d 731, 734 (M.D.N.C. 2003), *aff'd*, 85 Fed. Appx. 333 (4th Cir. 15 Jan. 2004), *cert. denied*, 543 U.S. 819, 125 S. Ct. 64, 160 L. Ed. 2d 27 (2004). Factors favoring issuance of a stay include the potential for the dispositive motion to terminate all the claims in the case or all the claims against particular defendants, strong support for the dispositive motion on the merits, and irrelevancy of the discovery at issue to the dispositive motion. *See Simpson v. Specialty Retail Concepts, Inc.*, 121 F.R.D. 261, 263 (M.D.N.C. 1988). Good cause for a stay may be shown where a party has filed, or has sought leave to file, a dispositive motion, the stay

is for a short period of time, and the opposing party will not be prejudiced by the order. *See Spencer Trask Software & Information Services, LLC v. RPost Intern. Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y., 2002).

7. Counsel for Plaintiffs advises that Plaintiffs oppose this Motion to Stay Discovery.

For the foregoing reasons, Defendants respectfully request that the stay of discovery be extended for the Amended Complaints until Fed. R. Civ. P. 12(b)(6) Motions to Dismiss them can be considered by the Court.

DATED: February 5, 2013

Respectfully Submitted,

**FRIEDMAN & MACFADYEN, P.A.
JOHNIE MUNCY
F&M SERVICES, L.C.**

By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of electronic filing (NEF) to the following:

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